

E-FILED - 10/15/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES I. MESA,)	C 08-4298 RMW (PR)
)	
Petitioner,)	ORDER DENYING MOTION FOR
)	APPOINTMENT OF COUNSEL
vs.)	
)	
LARRY SMALL, Warden,)	(Docket No. 5)
)	
Respondent.)	
_____)	

Petitioner, a California state prisoner, filed a pro se petition for a writ of habeas corpus. On September 30, 2008, the court issued an order to show cause to respondent as to why the petition should not be granted. For the reasons set forth below, the court DENIES petitioner's motion to appoint counsel (docket no. 5) without prejudice.

DISCUSSION

Petitioner requests appointment of counsel because he is untrained in the law and has not had the assistance of counsel in these proceedings. However, the Sixth Amendment's right to counsel does not apply in habeas corpus actions. Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). While 18 U.S. C. § 3006A(a)(2)(B) authorizes a district court to appoint counsel to represent a habeas petitioner if "the court determines that the interests of justice so require," the courts have made appointment of counsel the exception rather than the rule. Appointment is

1 mandatory only when the circumstances of a particular case indicate that appointed counsel is
2 necessary to prevent due process violations. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir.
3 1986).

4 Petitioner has thus far been able to adequately present his claims for relief. Respondent
5 has been ordered to produce the state record, which may include petitioner's state appellate
6 briefs prepared by counsel. No evidentiary hearing appears necessary in this case, nor are any
7 other extraordinary circumstances apparent. Accordingly, the court concludes that appointment
8 of counsel is not necessary at this time. Petitioner's motion for appointment of counsel (docket
9 no. 5) is DENIED without prejudice.

10 IT IS SO ORDERED.

11 Dated: 10/10/08



RONALD M. WHYTE
United States District Judge